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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/242,257	09/07/1999	JEAN GROLLET	RICHE4827.01	9828

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/09/2002

23

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-23

# Office Action Summary

Application No.

09/24/251

Applicant(s)

GROLLET

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

☒ Responsive to communication(s) filed on 10-19-01, 12-19-01, 5-13-02

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 1-18, 20-29 is/are pending in the application.

Of the above claim(s) 1-10, 16-18, 20-23, 25, 26, 28 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 11-15, 24, 27, 29 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some\* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 1774

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 19, 2001 has been entered.
2. Claims 1-10, 16-18, 20-23, 25, 26 and 28 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 22.

Applicant's traversal has been considered but is not convincing. It is not suggested that the composition in II can be mixed with a cake mix, as applicant assumes, but rather that said composition can be added to another food product by a procedure other than coating. It is not necessary that applicant's spec. disclose such other procedure to support a restriction requirement. As a result of applicant's claim 22 amendment the restriction between a Group I and IV is withdrawn. Applicant's contention that Groups I and V should be examined together is untenable since there is no factual evidence of record to support applicant's conclusion that the coextrusion suggested in paragraph no. 9, Paper No. 20 would result in an inedible mixture. Applicant's position with regard to Groups III and IV is not convincing since means to provide contact time or a wrapping means is not required by the process in IV<sup>which</sup> does not require a wrapping means. Motivation in applicant's spec. is not required to support the restriction between Group III and V., despite applicant's argument to the contrary. Although spraying may

Art Unit: 1774

provide better results than immersion, this does not preclude a restriction between Groups IV and V, as applicant contends.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-15 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11-15 and 24 are indefinite since it is not known what is intended by "and any similar food product" (claim 11, line 3) and since it is not clear to what "it" (claims 11-15 and 24) refers. Claims 15, 24, 27 and 29 are indefinite since it is not known what is intended by "normal food additives". Also, claim 15 is an improper dependent claim since a composition is claimed, but claim 15 depends upon a process claim, i.e. claim 1. If claim 15 is a process claim, then claim 15 will be non-elected and will not subsequently be subject to examination in the instant application. Corrections are required without new matter.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 15, 24, 27 and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Duffy et al (5,202,137)

Duffy et al discloses a chocolate product coated with a composition including alcohol and shellac.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy et al. Finding the optimum amount of each component would require nothing more than routine experimentation by one reasonably skilled in this art.

9. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy et al in view of Merory.

It would have been obvious to include Peru balsam and Benjamin gum (benzoin) in the coating composition of Duffy to impart a pleasant aroma or odor thereto since this is a known property of Peru balsam and benzoin, as evidenced by Merory.

10. Applicant's arguments filed October 19, 2001 have been fully considered but they are not persuasive. Applicant's remarks with regard to Duffy et al are without merit since applicant's claims are now limited to a particular composition, which is disclosed by Duffy et al with or without Merory, as set forth above. Applicant's process limitations are entitled to no patentable weight in applicant's composition claims.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is 703 308-3850. The examiner can normally be reached on Tuesday-Friday from 10:00 am to 7:30 pm and on alternate Mondays.

Art Unit: 1774

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703 308-3929. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

Examiner Corbin/ng  
August 7, 2002



ARTHUR L. CORBIN  
PRIMARY EXAMINER

